

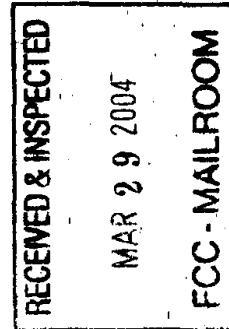
C4C203



Federal Communications Commission  
Washington, D.C. 20554

March 26, 2004

Vincent J. Curtis, Jr., Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, Virginia 22209



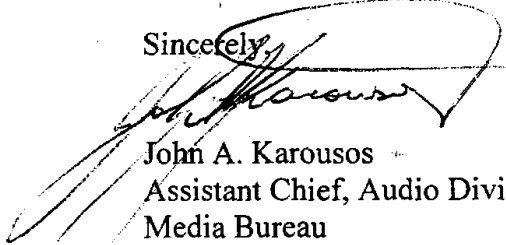
Dear Mr. Curtis:

This is in response to the petition for rule making you filed on behalf of Richard B. Smith, licensee of Station KMAK, Orange Cove, California, requesting the downgrade of Station KNGS, Coalinga, California, from a Class B facility to a Class A facility.

We have reviewed your proposal and find that it is unacceptable for consideration at this time. You have requested the downgrade of Channel 261B at Coalinga to Channel 261A to enable Station KMAK, Orange Cove, to increase its power to a full six-kilowatt Class A operation on Channel 262. A staff engineering analysis confirms that Channel 261A at Orange Cove as a six kilowatt facility is short spaced to Channel 261B at Coalinga. William L. Zawila, permittee of Station KNGS, Channel 261B at Coalinga has not consented to the downgrade of the facility (BMPH-19940217IB). Absent consent from the permittee to downgrade its class, the Commission will not require a station to involuntarily downgrade to accommodate the desire of another licensee or permittee to upgrade its facilities. On July 1, 2003, the Commission adopted an *Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order* against the construction permit for Channel 261B at Coalinga. However, unless and until the construction permit for Channel 261B at Coalinga is dismissed and the allotment is vacant, consent of the permittee is required to downgrade the facility. Although not a reason for returning your petition, you should be aware that there is also pending at the Commission a voluntary assignment of construction permit from William Zawila to Lazer Broadcasting Corp. for Channel 261B at Coalinga (BAPH-20040217AEF).

Based on the above discussion, we are returning your petition for Coalinga, California.

Sincerely,

  
John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Enclosure

ANN BAVENDER\*  
HARRY F. COLE\*  
ANNE GOODWIN CRUMP  
VINCENT J. CURTIS, JR.  
PAUL J. FELDMAN  
FRANK R. JAZZO  
EUGENE M. LAWSON, JR.  
MITCHELL LAZARUS  
SUSAN A. MARSHALL  
HARRY C. MARTIN  
LEE G. PETRO\*  
RAYMOND J. QUIANZON  
LEONARD R. RAISH  
JAMES P. RILEY  
ALISON J. SHAPIRO  
KATHLEEN VICTORY  
JENNIFER DINE WAGNER\*  
LILIANA E. WARD  
HOWARD M. WEISS

\*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

RETIRED MEMBERS  
RICHARD HILDRETH  
GEORGE PETRUTSAS  
CONSULTANT FOR INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
SHELDON J. KRYSS  
U. S. AMBASSADOR (ret.)

OF COUNSEL  
EDWARD A. CAINE\*  
DONALD J. EVANS  
EDWARD S. O'NEILL\*

WRITER'S DIRECT

(703) 812-0511

wagner@fhhlaw.com

October 10, 2002

**BY HAND-DELIVERY**

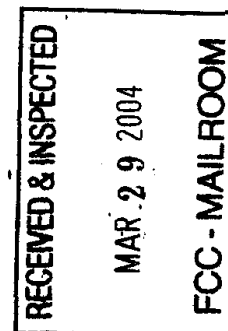
Marlene H. Dortch, Esq.

Secretary

Federal Communications Commission

445 12<sup>th</sup> Street, Room TW-B204

RE: **Petition for Rulemaking**  
**Coalinga, California**



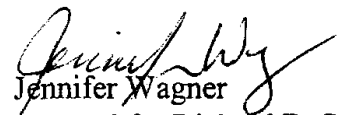
Dear Ms. Dortch:

Richard B. Smith, licensee of Station KMAK(FM) in Orange Cove, California, hereby files an original and four copies of a Petition for Rulemaking to downgrade the FM Station KNKS Class B Channel 261, Coalinga, California, to its original Class A status. The downgrade would permit first-adjacent station KMAK to increase its power and serve a substantial number of additional people in its community and the surrounding area.

Please date-stamp the enclosed confirmation copy of the Petition for Rulemaking and return with the courier.

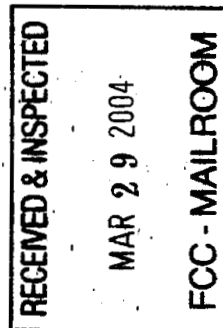
If any questions should arise concerning this matter, please contact the undersigned.

Sincerely,

  
Jennifer Wagner  
Counsel for Richard B. Smith

enc. (1)

cc: W. Kenneth Ferree, Esq. (w/enc.)  
Mr. John Karousos (w/enc.)  
Mr. Robert Hayne (w/enc.)  
William L. Zawila, Esq. (w/enc.)  
Mr. Richard B. Smith (w/enc.)



In re:  
Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations,  
(Coalinga, California)

)  
)  
) MM Docket No. \_\_\_\_\_  
) RM- \_\_\_\_\_  
)

To: Chief, Media Bureau

**PETITION FOR RULE MAKING**

Richard B. Smith, licensee of Station KMAK(FM), Orange Cove, California, hereby petitions for rule making to downgrade the FM Station KNGS Class B Channel 261, Coalinga, California, FM Table of Allotments, 47 C.F.R. §73.202(b), to its original Class A status. The downgrade of Channel 261 from a Class B to a Class A allotment would permit first-adjacent Station KMAK to increase its power to a full six-kilowatt Class A operation on Channel 262 and thereby permit KMAK to serve a substantial number of additional people in the Orange Cove community and surrounding area.

Channel 261A was assigned to Coalinga, California, as its first FM service on April 29, 1985. See 50 F.R. 12543 (March 29, 1985). Station KNGS was issued a construction permit in 1987 to build a Class A facility (File No. BPH-850709MT). Subsequently, on April 19, 1996, the Commission modified that construction permit by substituting Channel 261B for Channel 261A (File No. BMPH-940217IB). However, over 15 years after issuance of the initial construction permit, as of October 17, 2000, the Class B Coalinga facility had not been built.<sup>1</sup>

<sup>1</sup> See the November 17, 1999, *Informal Objection* to the KNGS license application (File No. BLH-19990804KJ); the December 29, 1999 *Supplement to Informal Objection*; the December 15, 2000 *Reply* and the December 5, 2000 *Complaint*, all filed by Mr. Smith (together the "Smith Pleadings.") In the Pleadings, Mr. Smith demonstrated that despite the August 4, 1999, filing of  
(continued...)

In October 1999, in its Memorandum Opinion and Order in Docket No. 98-43 ("October 1999 Order"), the Commission required that construction permits that had been outstanding for an extended period of time and had not been implemented pursuant to their authorized specifications would automatically expire by operation of law, as of a date defined in that Order.<sup>2</sup> Because, as demonstrated in the Smith Pleadings, the Coalinga Class B facility was never built by the required deadline, the Class B permit automatically expired per the Commission's October 1999 Order.

Therefore, the channel must be considered vacant and there cannot legally be any current service to the community of Coalinga on Channel 261B. Accordingly, Mr. Smith is requesting that the Commission downgrade the Coalinga allotment from Class B to its original Class A status.

The Commission previously found that a similar request served the public interest. *West Rutland, Vermont*, 16 FCC Rcd 12007 (Alloc. Branch 2001). In that case, the West Rutland

---

<sup>1</sup>(...continued)

a license application, even as of October 17, 2000, no tower had actually been built at the site and with the specifications identified in the Coalinga Class B construction permit.

<sup>2</sup> Originally, the Commission established February 16, 1999 as its automatic forfeiture deadline for such long-standing construction permits. See the Commission's November 25, 1998 *Report and Order* in Docket No. 98-43, 13 FCC Rcd 23056, 23091-92 (1998). In its October 1999 *Order*, 14 FCC Rcd 17525, 17536 (1999), the Commission added an additional year which extended the automatic forfeiture deadline to December 21, 2000. Either by that date or the expiration date of the construction permit, whichever was later, the station had to be operational pursuant to its construction permit with an application for covering license on file. See 14 FCC Rcd at 17526. Otherwise, the permit automatically forfeited. *Id.* In this case, the Coalinga Class B construction permit expired on August 4, 1999. Although the permittee filed a covering license application on that date, that application was inadequate because its representations that Station KNGS was constructed as a Class B facility were totally fabricated, as shown by Mr. Smith's Pleadings. By the December 21, 2000 deadline, there was still no further evidence that the station was operating pursuant to its construction permit. Therefore, as of December 21, 2000, the Coalinga construction permit for the Class B station automatically expired by operation of law.

permittee petitioned for and was granted an upgrade through a rulemaking proceeding, but the implementing application was dismissed and never re-filed. In addition, the underlying construction permit had been declared forfeit. Subsequently, the licensee of another station seeking to increase power requested a downgrade of the West Rutland channel to its original Class A status. *Id.* The Commission correctly found there that there was no public interest justification for retaining the Class C3 channel at West Rutland, but rather that the public interest would be served by allowing another station to improve its facilities.

Essentially the same circumstances are present, and the same logic applies in the instant case. Here, the permittee requested and was granted an upgrade of his construction permit through an application, but he has never constructed the facilities authorized by his modified construction permit. Accordingly, the construction permit must be declared forfeit, and there is no public interest justification for retaining the higher class channel at Coalinga. Rather, just as in *West Rutland*, the public interest would be best served by downgrading the Coalinga channel so that KMAK may improve its facilities.

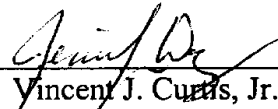
Grant of this request would improve service to the communities of Orange Cove and Coalinga, California, by allowing an increase in service to the public in those areas. When the Media Bureau deletes Channel 261B and reinstates the original Coalinga Channel 261A allotment, Mr. Smith will request authorization to increase the power for KMAK to a full six-kilowatt Class A operation. In addition, upon the Commission declaration that the Coalinga channel is vacant and upon the opening of a filing window for that channel, Mr. Smith intends to submit an application for a construction permit for the Coalinga channel. Mr. Smith will construct and operate his full Class A facilities as soon as he is authorized. The operation of the

Class A station at Coalinga,<sup>3</sup> coupled with the operation of a full six-kilowatt Class A station in Orange Cove, will result in the provision of service to over 25,000 people.<sup>4</sup>

For the foregoing reasons, Mr. Smith requests that the Media Bureau grant this Petition.

Respectfully submitted,

**RICHARD B. SMITH**

By:   
Vincent J. Curtis, Jr.  
Anne Goodwin Crump  
Jennifer Wagner

His Counsel

FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
(703) 812-0400

October 10, 2002

<sup>3</sup> Because the Coalinga Class B station has never been built, the Coalinga permittee has failed to provide, to date, the public service benefits anticipated in the Commission's original proceeding to allocate the Coalinga station. See In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Coalinga, California), *Notice of Proposed Rulemaking* (Released May 6, 1988), 3 FCC Rcd 2567; In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Coalinga, California), *Report and Order* (Released March 8, 1989), 4 FCC Rcd 2171 (the "March 1989 Report and Order").

<sup>4</sup> See the Commission's March 1989 Report and Order, supra.

**CERTIFICATE OF SERVICE**

I, Carla M. Whitlock, a secretary with the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 10<sup>th</sup> day of October, 2002, I sent copies of the foregoing Petition for Rule Making to be delivered, via United States Postal Service, or as otherwise indicated, to the following individuals:

W. Kenneth Ferree, Esq.\*  
Bureau Chief  
Media Bureau  
445 12<sup>th</sup> Street, S.W.  
Room 3C-740  
Washington, D.C. 20554

Mr. John Karousos\*  
Assistant Division Chief  
Audio Division  
Media Bureau  
Room A-266  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Mr. Robert Hayne\*  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 3-A262  
Washington, D.C. 20554

William L. Zawila, Esquire  
12550 Brookhurst Street  
Garden Grove, California 92640



Carla M. Whitlock

\*By Messenger